



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Curl's Building Maintenance

File: B-237012

Date: December 1, 1989

DIGEST

Regulations prohibiting small disadvantaged business set-aside where the contracting agency had previously contracted for services under a small business set-aside does not apply to first-time acquisition by a separate agency for part of the same services previously acquired.

DECISION

Curl's Building Maintenance, Inc., protests any contract award under invitation for bids (IFB) No. DCA200-89-B-0009, issued by the Defense Commercial Communications Office (DECCO) for custodial and snow-removal services for the DECCO building located at Scott Air Force Base, Illinois. Curl's alleges that the agency improperly set the procurement aside exclusively for small disadvantaged business (SDB) participation, and that the agency failed to provide a copy of the IFB to Curl's or otherwise solicit a bid from the firm.

We deny the protest in part and dismiss it in part.

DECCO is a subordinate command of the Defense Communications Agency. Located on Scott Air Force Base, the DECCO building had been included in an Air Force building custodial contract serving many buildings on the base because of an interagency support agreement between DECCO and the Air Force. However, DECCO has been expanding its own contract support branch and will be moving to a new building, also at Scott Air Force Base, in late 1990. Based on these two changes, DECCO and the Air Force agreed in January 1989 that the DECCO building should no longer be maintained under the Air Force contract but under a separate DECCO building custodial contract. It is the solicitation and award of this new contract that is at issue here.

DECCO established an acquisition plan for procuring the required custodial services, setting the procurement aside

for exclusive SDB participation. DECCO's SDB Utilization Specialist, Legal Counsel and Procurement Division Director all approved the acquisition plan. The solicitation was advertised in the Commerce Business Daily. The IFB was sent to 25 firms, and 7 responded with timely bids.

Curl's protests that it was improper to restrict the solicitation to SDB concerns because the Air Force base custodial contract, which included the maintenance of this building in the past, was a total small business set-aside with Curl's as the incumbent.

The protester relies on Federal Acquisition Regulation (FAR) § 19.501(g) (FAC 84-45), which provides that once a product or service has been acquired successfully by a "contracting office" on the basis of a small business set-aside, all future requirements of that office for that particular product or service shall be acquired on the basis of a repetitive set-aside, if (as here) required by agency regulations. In addition, Department of Defense (DOD) FAR Supplement (DFARS) § 219.502-72(b)(1) (1988 ed.) specifically precludes the use of an SDB set-aside where the product or service has been previously successfully acquired under a small business set-aside. We do not think these regulations are applicable here.

In this case, the DECCO contracting office had never procured this service before. The Air Force and the Defense Communications Agency are separate agencies with separate contracting offices. In our view, although the new procurement involves service for one building that was included under the Air Force base contract, the agency reasonably determined that the services represent a first-time acquisition for DECCO. Cf. Defense Servs., Inc., B-232303.3, Nov. 1, 1988, 88-2 CPD ¶ 423. In short, we do not think that custodial service for one building procured by a separate contracting office represents the same requirement as custodial services for an entire base. This portion of the protest is therefore denied.

Next, Curl's protests that it was improperly excluded from the competition because it was not given a copy of the IFB and also protests that the contracting officer allegedly intends to improperly modify the solicitation. However, since Curl apparently is not an SDB and therefore is not qualified for award under an SDB set-aside, it is not an interested party to protest these issues. "Interested party" for the purpose of filing a protest means an actual or prospective bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a) (1989). Since we have

found that DECCO could properly set the procurement aside for exclusive SDB participation, Curl's would not be eligible to compete. This portion of the protest is therefore dismissed.

The protest is denied in part and dismissed in part.

Ronald Berger
JH James F. Hinchman
General Counsel